



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hugo's Cleaning Service, Inc.

File: B-228396.4

Date: July 27, 1988

DIGEST

1. In face of contention that responsibility determination amounted to bad faith General Accounting Office concludes that the determination was reasonable where, although awardee was undergoing bankruptcy proceedings, it provided a letter of commitment from financial institution for working capital to fund performance of the contract.
2. Fact that awardee is undergoing bankruptcy proceedings does not indicate that contracting officials acted in bad faith in finding awardee to be a responsible firm.
3. General Accounting Office does not consider challenges to small business size status because the Small Business Administration has conclusive authority to decide such matters.

DECISION

Hugo's Cleaning Service, Inc. protests the award of a contract to Unified Systems, Inc. under a two-step sealed bidding procurement conducted by the Air Force for custodial services at Cape Canaveral, Florida. The solicitation was a total small disadvantaged business set-aside. Hugo alleges that Unified does not have the financial capability required by the solicitation, is not a responsible offeror, and is not a small disadvantaged business. We deny the protest in part and dismiss it in part.

The request for technical proposals (RFTP), the first step of the procurement, was issued on September 14, 1987. An invitation for bids (IFB), the second step, was issued on November 10, with bids opened on November 30. The apparent low bidder alleged a mistake in its bid and was allowed to withdraw. The Air Force proposed to make award to Unified the second low bidder. Hugo's, the next low bidder, alleges that award to Unified is improper since the firm is undergoing bankruptcy proceedings and therefore lacks the financial capability required by the solicitation. We find this argument to be without merit.

C42826

The solicitation provided that:

"The offeror's management/technical proposal must convey to the government that the offeror has adequate financial resources to perform the contract, or the ability to obtain them."

The protester alleges that it was unreasonable for the contracting officer to find Unified financially capable, primarily because Unified filed a voluntary petition for bankruptcy on November 4, 1986, which, according to the protester, indicated an inability to meet the solicitation's financial capability requirements. The protester points to the RFTP's proposal preparation instructions concerning financial capability which essentially inform offerors that they need to demonstrate that they have or have access to financial resources adequate to meet all expenses for the first three months of contract performance.

The record indicates that Unified submitted a letter from a financial institution stating that if Unified is awarded the contract, it would advance Unified up to \$800,000 working capital for the performance of the contract. The agency determined that based on that letter of commitment, Unified's financial capability was acceptable and that it was a responsible prospective contractor. Further, it is clear from the record that the contracting agency was aware of and considered the ongoing bankruptcy proceedings in reaching its decision to make award to Unified.

Generally, our Office will not review protests against affirmative determinations of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials. Nationwide Glove Co., Inc., B-229690, Dec. 23, 1987, 67 Comp. Gen. ___, 87-2 CPD ¶ 624. The protester has suggested that the contracting officer's determination of responsibility in the face of the bankruptcy filings amounted to bad faith or fraud. We find this argument to be without merit. The fact that a contractor is undergoing bankruptcy does not require a finding of nonresponsibility. Security America Services, Inc., B-225469, Jan. 29, 1987, 87-1 CPD ¶ 97. Moreover, contracting officials are presumed to act in good faith and, in order to establish otherwise, there must be virtually irrefutable proof that the agency had a malicious and specific intent to harm the protester. Air Tractor, Inc., B-228475, Feb. 5, 1988, 88-1 CPD ¶ 115. There is no indication in the record of any such intent on the agency's part.

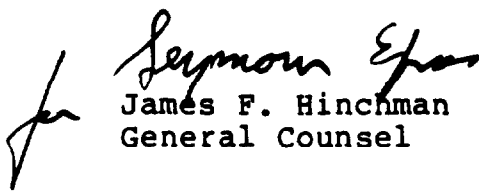
Hugo's also challenges Unified's status as a small business because the bankruptcy court filings indicate that Unified graduated from the small business program and that as part

of the proposed reorganization, Unified will become affiliated with a large, international financial organization. Our Office does not consider small business size status determinations since the Small Business Administration has conclusive statutory authority to make that determination for federal procurement purposes. The Silcraft Corp., B-226605.2, Sept. 23, 1987, 87-2 CPD ¶ 290.

The protester also alleges that Unified will not be able to pass the required security clearance after the reorganization when it becomes affiliated with the international financial organization. To be timely a protest on this ground must be submitted within 10 working days after the protester knows or should know its basis of protest. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988). Although the protester was aware of the proposed affiliation at the time the protest was filed, Hugo's did not raise this protest basis until its comments on the agency report on the protest. This argument is therefore untimely and will not be considered. In any event, Unified's contention concerns a matter of contract administration which is the responsibility of the contracting agency and not our Office. 4 C.F.R. § 21.3(m)(1); HEI, Inc., B-228482, Jan. 25, 1988, 88-1 CPD ¶ 68. Similarly, Hugo's argument that Unified's financial condition will cause it to repudiate an existing collective bargaining agreement raises an issue of contract administration which we will not consider as part of our bid protest function. Id.

Finally, Hugo's complains that the agency refused to disclose whether or not Unified extended its bid acceptance period through February 25 as requested by the contracting officer. The agency's refusal to release such information is not a ground for protest and, in any event, we have been informed by the agency that Unified did extend its bid.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel